

604(b) Funding Questions

POSITION: States must establish and maintain a continuing planning process, including the process for updating and maintaining WQM plans, and the process for assuring adequate authority for intergovernmental cooperation. DPAs and their regional WQM plans are integral to maintenance of the State's CPP, WQM plan, and intergovernmental cooperation.

REFERENCES:

40 CFR §130.5 Continuing planning process:

- Section 130.5(a) requires that each State establish and maintain a continuing planning process (CPP) as described under section 303(e) of the CWA;
- Section 130.5(b)(4) requires that each state's CPP include a description of the process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision; and
- Section 130.5(b)(5) requires that each state's CPP include a description of the process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

CWA SEC. 303 [33 U.S.C. 1313] Water Quality Standards and Implementation Plans:

- Section 303(e)(3)(B) requires each state's CPP to include the incorporation of all elements of any applicable areawide waste management plans under section 208; and
- Section 303(e)(3)(E) requires each state's CPP to include adequate authority for intergovernmental cooperation.

[NOTE: ADEQ's CPP was last updated in 1993 (25 years ago), and the State's WQMP was last updated in 1979 (almost 40 years ago).]

QUESTIONS:

HOW WILL ADEQ BE ABLE TO ENSURE ONGOING MAINTAINANCE OF THE CONTINUING PLANNING PROCESS AND STATE AND REGIONAL WQM PLANS IF A BASE LEVEL OF FUNDING IS NO LONGER AVAILABLE TO THE DPAs TO UPDATE THEIR WQM PLANS?

HOW WILL ADEQ ENSURE ONGOING MAINTAINANCE OF THE CONTINUING PLANNING PROCESS AND STATE WQM PLAN IF A BASE LEVEL OF FUNDING IS NO LONGER AVAILABLE TO THE DPAs, TO PROCESS CONSISTENCY REVIEWS AND/OR PLAN AMENDMENTS?

HOW WILL ADEQ BE ABLE TO ASSURE ADEQUATE AUTHORITY FOR INTERGOVERNMENTAL COOPERATION IN IMPLEMENTING THE STATE WQM PROGRAM IF A BASE LEVEL OF FUNDING IS UNAVAILABLE TO THE DPAs?

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**POSITION:** Under Federal law, regional planning agencies [and certain counties designated by default] are the only designated water quality planning agencies in Arizona. Under State rules, and ADEQ's CPP, the DPAs and their regional WQM plans are integral to statewide water quality management planning and implementation. As multi-jurisdictional agencies that include representation from local elected officials, COGs are the preferred vehicle to ensuring the required intergovernmental cooperation and participation, public outreach, participation and involvement, and information exchange in the WQM planning process.

### REFERENCES:

#### CWA SEC. 208 [33 U.S.C. 1288] Areawide Waste Treatment Management

- Section 208(a)(2) requires the Governor of each state **to identify areas within the State** which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems, **and designate the boundaries of each such area, and a single representative organization, including elected officials from local governments or their designees, capable of developing effective area wide waste treatment management plans for such area.**
- Section 208(a)(5) provides for **existing regional agencies to be designated as the single representative organization for such areas under paragraph (2), (3), and (4) of subsection 208(a).**

#### AAC R18-5-301. Definitions

- Paragraph 7 defines “State water quality management plan” to mean a planning document that includes (a) **Certified Areawide Water Quality Management Plans and amendments**, and (e) **intergovernmental agreements between the Department and a designated water quality planning agency** or a designated management agency as elements.

*[NOTE: These elements are also set forth in ADEQ’s CPP, Chapter 2, which discusses components of the State WQM plan.]*

#### Excerpt from ADEQ’s 1993 CPP Appendix III, Page III-8:

“The COGs and ADEQ have a unique and very valuable relationship in WQM planning, **starting with the WQM planning partnership role established by CWA Section 208** (see Appendix V). The COGs provide a **vehicle through which local governments may participate in the WQM planning process.** They provide technical assistance to local entities in the preparation, **amendment and update of Areawide WQM Plans, including promoting and ensuring adequate public participation in plan development** and adequacy of plan amendments.

**The COGs assist the local/state agency information exchange, public participation processes, and help elevate local needs and priorities to ADEQ’s attention for consideration in its statewide WOM program efforts. All major regional policy decisions are reviewed and approved by the COG decision making bodies, or regional boards, which are comprised of local elected officials.** The boundaries of the six COGs and the counties served are shown in Figure 3 on page III-10.”

#### QUESTIONS:

**IF NO BASE LEVEL OF FUNDING IS AVAILABLE TO THE DPAs ON AN ANNUAL BASIS, HOW WILL LOCAL GOVERNMENT PARTICIPATION IN THE WQM PLANNING PROCESS BE ENSURED? HOW WILL PUBLIC PARTICIPATION REQUIREMENTS BE ENSURED? HOW WILL TECHNICAL ASSISTANCE BE PROVIDED IN PLAN DEVELOPMENT AND AMENDMENT?**

**HOW WILL DPAs HAVE THE RESOURCES TO PERFORM CONSISTENCY REVIEWS OR PLAN AMENDMENTS ABSENT IGAs PROVIDING THE FUNDING TO DO SO?**

**IF NO BASE LEVEL OF FUNDING IS AVAILABLE TO THE DPAs ON AN ANNUAL BASIS, AND ABSENT IGAs ESTABLISHING CONTRACTUAL OBLIGATIONS TO PERFORM PLANNING ACTIVITIES, WHAT WOULD COMPEL DPAs TO RESPOND TO REQUESTS FOR CONSISTENCY REVIEWS AND/OR PROCESS REGIONAL WQM PLAN AMENDMENTS?**

**POSITION:** Federal regulations require ADEQ to consult with DPAs in the joint development, review and revision of State work program and WQM planning activities.

#### REFERENCES:

40 CFR §130.11 Program management.

- Section 130.11(e) establishes the EPA, States, areawide agencies, and local and Regional governments as joint participants in the water pollution control program. State work programs are required to be developed jointly with Regional and other comprehensive planning organizations.

#### **CWA SEC. 205 [33 U.S.C. 1285] Allotment**

- Section 205(j)(3) also requires states to develop jointly with *local, regional, and interstate entities*, a plan for carrying out the WQM program.

#### **Excerpt from ADEQ's 1993 CPP Appendix IV, Page IV-2:**

"Water Quality Management Working Group (WQMWG)

The Water Quality Management Working Group is a voluntary advisory body that meets quarterly, or as necessary, to consider and make recommendations to ADEQ regarding matters of statewide WQM policy and program implementation. The WQMWG is instrumental in the review and revision of state WQM programs, as it assists the Department in developing an integrated WQM program, from both a regional and statewide perspective."

#### **QUESTIONS:**

**IF NO BASE LEVEL FUNDING IS AVAILABLE TO THE DPAs ON AN ANNUAL BASIS, HOW WILL ADEQ ENSURE A REGIONAL AND STATEWIDE PERSPECTIVE IN THE DEVELOPMENT, REVIEW, REVISION AND IMPLEMENTATION OF STATE WQM POLICY AND PROGRAMS?**

**IF A BASE LEVEL OF FUNDING IS UNAVAILABLE TO THE DPAs, HOW WILL ADEQ DEMONSTRATE THAT THEIR WORK PROGRAM IS DEVELOPED JOINTLY WITH DPAs?**

**POSITION:** Federal regulations require planning funding be directed to and prioritized for DPAs for purposes of developing and operating a continuing areawide waste treatment management planning processes. Offering these funds to agencies that do not operate such planning processes through a statewide competitive process is contrary to Federal law.

#### **REFERENCES:**

#### **CWA SEC. 208 [33 U.S.C. 1288] Areawide Waste Treatment Management**

- Section 208(f)(1) requires the administrator to make grants to any agency designated under Section 208, subsection (a) for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process.

#### **CWA SEC. 205 [33 U.S.C. 1285] Allotment**

- Section 205(j)(3) requires states to give funding priority to DPAs for purposes of carrying out WQM planning, and to allocate at least 40 percent of the amount granted to the state for a fiscal year to regional public comprehensive planning organizations.
- Section 205(j)(3) allows for an allocation of less than 40 percent in any fiscal year only if it has been determined that the allocation of at least 40 percent to regional public comprehensive planning organizations will not result in significant participation by such organizations in water quality management planning, will not significantly assist in development and implementation of the WQM plan, will not aid in achieving the goals of the Clean Water Act, and only after consultation with the regional public comprehensive planning organizations and with the approval of the EPA Administrator.

**40 CFR §130.11 Program management.**

- Section 130.11(a) establishes that local or regional planning organizations may request CWA Section 205(j) funds from a State for planning and management activities.

**QUESTIONS:**

**GIVEN THAT THE ONLY DPAs HAVE BEEN DESIGNATED TO DEVELOP AND MAINTAIN AREA WIDE WATER QUALITY MANAGEMENT PLANS, HOW DOES ADEQ JUSTIFY INCLUDING AGENCIES THAT ARE NOT DPAs AND THAT MAY NOT HAVE THE REQUIRED NEXUS TO INTERGOVERNMENTAL COOPERATION AND REGIONAL ELECTED OFFICIALS IN A COMPETITIVE PROCESS FOR 604(b) FUNDING?**

**HOW DOES ADEQ JUSTIFY ELIMINATING THE 40% BASE FUNDING PRIORITIZED FOR DPAs TO DEVELOP AND MAINTAIN THEIR AREA WIDE WATER QUALITY MANAGEMENT PLANS WHEN CONSULTATION TO DETERMINE THAT THE 40% WILL NOT RESULT IN SIGNIFICANT PARTICIPATION IN WQM PLANNING OR THE DEVELOPMENT AND IMPLEMENTATION OF THE PLAN AND ACHIEVING THE GOALS OF THE CLEAN WATER ACT HAS NOT OCCURRED?**

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POSITION: The DPAs have been informed that 604(b) funding will no longer be allowed to carry over from one fiscal year to another. There is \$100,000 in 604(b) funding available each fiscal year pursuant to Section 205(j). The \$100,000 is available for two fiscal years – the fiscal year it was awarded in and the following fiscal year. If all the funds from the first fiscal year are not spent, the unspent portion can be carried over to the following fiscal year. If all of the funds from the first fiscal year are not spent in the second fiscal year, then the unspent portion cannot be carried over again, but is reallocated to states that utilized their full allotments. But the second year has its own allotment of \$100,000 and those funds are on their own two-year cycle for obligation.

REFERENCES:

CWA SEC. 604 [33 U.S.C. 1384] Allotment of Funds.

- Section 604(c)(1) establishes the period during which the 604(b) funds remain available. The funds allotted to each state are available for obligation during the fiscal year for which sums are authorized and during the following fiscal year – a two-year period.
- Section 604(c)(2) establishes the circumstances under which unused funds are reallocated. Any amount of funds not obligated by a state by the last day of the 2-year period of availability established by Section 604(c) paragraph (1) are reallocated on the same basis as allotment for the second fiscal year of such 2-year period. None of the unused funds can be reallocated to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

QUESTIONS:

WHY IS ADEQ NO LONGER ALLOWING THE CARRYING OVER OF 604(b) FUNDS FROM THE FIRST FISCAL YEAR ALLOTTMENT TO THE SECOND FISCAL YEAR?

WHY DOESN'T ADEQ SPEND DOWN THE FUNDS CARRIED OVER INTO THE SECOND YEAR BEFORE SPENDING ANY OF THE FUNDING ALLOTTED FOR THE SECOND YEAR?

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**POSITION:** DPAs once enjoyed a collaborative, mutually beneficial relationship with ADEQ. Based on events experienced over the last several years, it appears that once-valued relationship and the role of the DPAs in WQM planning has become irrelevant in the eyes of ADEQ.

**REFERENCES:**

**Excerpt from ADEQ's 1993 CPP Appendix III, PAGE III-8:**

*"The COGs and ADEQ have a unique and very valuable relationship in WQM planning, starting with the WQM planning partnership role established by CWA Section 208 (see Appendix V)....."*

**Excerpt from ADEQ's 1993 CPP Appendix IV, PAGE IV-2:**

*"..... The WQMWG is instrumental in the review and revision of state WQM programs, as it assists the Department in developing an integrated WQM program, from both a regional and statewide perspective....."*

**QUESTIONS:**

**WHAT HAS CHANGED ABOUT THE RELATIONSHIP BETWEEN THE DPAs AND ADEQ THAT IT HAS GONE FROM BEING CONSIDERED "VERY VALUABLE" TO INSIGNIFICANT?**

**WHAT STEPS CAN THE DPAs TAKE TO BECOME VALUED PLANNING PARTNERS ONCE AGAIN?**